IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 18TH SEPTEMBER 2007 / 27TH BHADRA 1929

SA.No. 308 of 1994()

(AGAINST THE JUDGMENT IN AS.109/1985 ON THE FILE OF THE SUBORDINATE JUDGE'S COURT, KOTTARAKKARA DATED 16/10/1993 IN D.R.P.(O.P.)NO.9/1982 ON THE FILE OF THE MUNSIFF'S COURT, PUNALUR)

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APPELLANT: APPELLANT:COUNTER PETITIONER:

OOMMEN GEORGE,
VAYALIRAKKATHU PUTHEN VEEDU,
PANDITHITTA MURI, THALAVOOR VILLAGE.

BY ADV. SRI.T.K.KURIKESU

RESPONDENT:RESPONDENT:PETITIONER:

NALLAI MARIA,
PUTHENVILA VEEDU,
PANDITHITTA MURI,
THALAVOOR VILLAGE.

BY ADV. SRI.C.C.THOMAS
SRI.M.G.KARTHIKEYAN

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 18/09/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

ORDER ON C.M.P.NO.546/1994 IN S.A.NO.308/1994

DISMISSED

18/09/2007 **SD/- M.SASIDHARAN NAMBIAR, JUDGE**

/TRUE COPY/

P.A.TO JUDGE

KSS

M.SASIDHARAN NAMBIAR,J.

S.A .NO. 308 OF 1994

Dated 18th September 2007

J U D G M E N T

Second appeal is filed challenging the judgment in A.S.109 of 1985 whereunder the order passed by Munsiff, Punalur in D.R.P (O.P) No.9 of 1982 under Section 11 of Kerala Agriculturist Debt Relief Act, 1970 was confirmed. Appeal is filed contending that Ext.A1 is not a mortgage but an ottikuzhikanam deed coming within the ambit of Kerala Land Reforms Act and therefore concurrent findings of Munsiff and Sub Judge are not sustainable.

2. Question is whether a second appeal will lie against an order passed in an appeal challenging the order passed by Munsiff under Section 11 of Kerala Agriculturist's Debt Relief Act, 1970 (hereinafter referred to as the Act).

3. Section 11 is a special provision in respect of certain mortgages by agriculturists. Sub section 2 provides that notwithstanding that the period of the mortgage has not expired, a mortgagor who is an

agriculturist shall, on application, be entitled, subject to the provisions of sub sections (4) and (6), to recover the mortgaged property on depositing in court, one third of the mortgage amount and where there is stipulation for payment of interest to the mortgagee in respect of the principal amount secured by the mortgage or any portion thereof and there is arrears such interest in addition to the usufructs from the mortgaged property calculated at the rate specified in section 5 and also the value of improvements, if any, effected in the mortgaged property by the mortgagee subsequent to the date of the mortgage, as determined by the court. Sub section 4 provides that where the application and deposit as required by sub section (2) have been made and court fees have been paid as required by sub section (3), court shall put the mortgagor in possession of the property and pass an order allowing the mortgagee to recover by sale of mortgaged property the balance of the mortgage amount in sixteen half yearly instalments together with the interest accrued due on such balance outstanding till the date of payment of each instalments at 6% per annum. Sub section 5 provides that an order passed under sub section 4 shall

be deemed to be a decree.

4. Petition was filed by the respondent as provided under section 11 (2). Learned Munsiff passed an order as provided under sub section 4 on 22/11/1984. In view of sub section 5 of Section 11, the order is deemed to be a decree.

Section 21 provides for an appeal. It reads,

> "21. Appeal- (1) An appeal shall lie against any order passed under sub section (8) of Section 7 of section 9 or section 11 or section 13 or section 14 or section 16 or section 20 to the court to which appeals ordinarily lie from the decisions of the court which has passed the order:
>
> Provided that where the order is passed by a revenue court, the appeal shall lie to the District court within whose jurisdiction the revenue court is situate and such appeal shall be filed within sixty of the date of the order appealed against.
>
> (2) An order passed in appeal under sub section (1) shall be final.

Therefore Section 21 enables a party to file an

appeal against an order passed under Section 11(4) before the court in which an appeal ordinarily will lie from the decision of that court.

5. Appellant filed A.S.109 of 1985 as provided under Section 21(1) of the Act. Appeal was dismissed confirming the order of learned Munsiff.

6. When sub section 2 of Section 21 mandates that an order passed in an appeal under sub section 1 of Section 21 shall be final and the Act does not provide for a second appeal, against the order in the appeal no second appeal will lie. Therefore second appeal is not maintainable. It is dismissed.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.308 OF 1994

18th September 2007

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